INDEX

	Pages
Statement of the Case	1-3
Summary of Argument	3-4
Argument:	
Point 1	4-5
Point 2	6-7
Point 3	7-9
Appendices:	
Appendix A—Art. 1024a, Vernon's Ann. Tex. Stat.	10-11
Appendix B—Art. 1024b, Vernon's Ann. Tex. Stat.	12-13

AUTHORITIES

	Pages
United States Statutes:	
Chapter IX, Municipal Bankruptcy Act, as amended	2, 4
Texas Constitution and Statutes:	
Article III, Sec. 35, Constitution of Texas	4
Act of April 27, 1935, Art. 1024a (Appendix A)	10-11
Act of 1939, Art. 1024b (Appendix B)	12-13
Table of Cases:	
Case v. Los Angeles Lumber Co., 308 U. S. 106	7
General Pictures Co. v. Electric Co., 304 U. S. 175, 177	5
Guaranty Trust Co. v. Henwood, 307 U. S. 247, 263	6
Helis v. Ward, 308 U. S. 365, 470 (1939)	4
Mission Independent School District, In re, 35 Fed. Supp. 37	1-2
Mission Independent School District v. State of Texas, et al., 116 Fed. (2d) 175	1-2
Prudence Co., Inc., v. Fidelity & Deposit Co., 297 U. S. 198, 208	5
Sutter v. Midland Valley R. Co., 280 U. S. 521	3-4

Supreme Court of the United States

OCTOBER TERM, 1940

No. 856

THE STATE OF TEXAS, ET AL., *Petitioners*,

VS.

MISSION INDEPENDENT SCHOOL DISTRICT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION TO THE PETITION FOR CERTIORARI

Statement of the Case

As stated in the opinion of the Court of Appeals (R. 71), the District Court expressly found that the State of Texas and its Attorney General "did not object to the Plan of Composition as offered, but believed it to be fair and equitable to all creditors alike" (R. 60) and if respondent "had proper legal authority from the State of Texas to invoke the pro-

visions of the Municipal Bankruptcy Act, that the State would not complain." (R. 60.)

The District Court further found that the Plan of Composition complies with the provisions of Chapter IX of the Bankruptcy Act as amended (R. 61) and that "except for Article 1024b, (Appendix B) the petitioner (respondent here) is authorized by law to take all action necessary to be taken by it to carry out the plan of composition." (R. 63.)

Texas has enacted two statutes authorizing its municipalities to go into bankruptcy. The first is the Act of April 27, 1935, Article 1024a (Appendix A). This Act was found by the Court of Appeals to be "clear authorization, or consent, if that term be preferred, to proceed under such bankruptcy laws as Congress had made, or might make." (R. 73.) Article 1024a has not been repealed, unless impliedly by Article 1024b (Appendix B). The latter (1939) Act contains a more restricted consent than Art. 1024a, and concludes with the appendage "but this Act shall not apply to any bond or bonds while held by the permanent school fund of Texas." (Post, p. 12.)

The Court of Appeals held, first, that the District Court had erroneously construed the Texas statute 1024b; second, that, properly construed, the statute is repugnant to the Bankruptcy Act; and, third, that, even as erroneously construed by the District Court, the statute still is invalid because in conflict with the Texas Constitution. This latter, conditional ruling is all that is challenged in the petition. The challenge takes no account of the second holding, or of the first holding expressed in the sentence immediately following:

"We therefore think the strained construction adopted in order to preserve this clause is inadmissible. The clause fails of effect, either because in conflict with the provisions of the bankruptcy Act or because inserted contrary to the State Constitution."

This was to say that if the Court of Appeals has correctly interpreted the statute, it fails because in conflict with the Bankruptcy Act. (The District Judge concurred.) But if the statute means what the District Judge thought it meant, it fails under the Texas Constitution. (The District Judge disagreed.) The District Judge felt impelled to place upon the statute an interpretation that would save it from conflict with the Bankruptcy Act. The Court of Appeals thought that such strained construction adopted to sustain the final clause "was inadmissible."

Even if this Court should concur with the District Judge in the view that the statute, thus interpreted, does not contravene the Texas Constitution, this would leave unimpaired the ruling of the Court of Appeals that the construction placed upon the statute by the District Judge "is inadmissible." And this would leave equally intact the unchallenged ruling that the statute, properly construed, fails because it contravenes the Bankruptcy Act.

Summary of Argument

1. The petition should be denied because it does not adequately and fairly disclose the questions involved and the grounds upon which the Court of

Appeals rested its decision. *Sutter v. Midland Valley R. Co.*, 280 U. S. 521. The decision below was made to turn on rulings, independently adequate, not complained of in the petition.

2. The decision below is right because the Court correctly construed the appendage to Article 1024b as exempting bonds owned by the State "from the operation of any composition made," and as so construed the appendage contravenes the Bankruptcy Act.

3. The decision below is right because if Article 1024b is construed as petitioner would have it, the caption thereto is misleading and deceptive and therefore violates Sec. 35, Article III, Constitution of Texas.

ARGUMENT

Point 1

The petition should be denied because it does not adequately and fairly disclose the questions involved and the grounds upon which the Court of Appeals rested its decision. *Sutter v. Midland Valley R. Co.*, 280 U. S. 521. The decision below was made to turn on rulings, independently adequate, not complained of in the petition.

We assume that if the writ should be granted, the Court would then confine itself to the ground upon which the writ is predicated and that the review would be "no broader than that sought by the petitioner." *Helis v. Ward*, 308 U. S. 365, 470

(1939); *General Pictures Co. v. Electric Co.*, 304 U. S. 175, 177.

In presenting for review the single question stated in the petition (p. 2), and specified as error (p. 4), petitioner seems to be of the view that the judgment of the Court of Appeals, reversing that of the District Court, has been made to rest upon the ground thus challenged. But by Judge Sibley's opinion it appears that the judgment rests upon other, and independent, grounds, adequate to sustain it, as to which no complaint is made in the petition.

If the Court should agree with petitioner on the single point presented, this would not work a reversal of the judgment, since the Court will assume to be correct the rulings of the Court of Appeals not complained of by petitioner. *The Prudence Co., Inc., v. Fidelity & Deposit Co.*, 297 U. S. 198, 208.

Article 1024b, the second (so-called) consent statute, presented, first, a problem of interpretation, and, second, a question as to its validity. The District Judge and the Court of Appeals concurred in holding that if the statute has the meaning ascribed to it by the Court of Appeals, it is invalid because in conflict with the Bankruptcy Act. The District Judge was of the view that if it has the meaning that he ascribed to it, the statute is valid. The Court of Appeals ruled that such interpretation was inadmissible, but that the statute, so erroneously interpreted, is invalid because in conflict with the Texas Constitution. The only ruling complained of by petitioner is the conditional ruling last stated.

Point 2

The decision below is right because the court correctly construed the appendage to Article 1024b as exempting bonds owned by the State "from the operation of any composition made," and, as so construed, the appendage contravenes the Bankruptcy Act.

The appendage to Article 1024b says that the consent expressed in that Article shall not be applicable to any "bond or bonds while held by the permanent school fund of Texas." (Appendix B.)

The Court of Appeals said that the appendage is susceptible of two possible interpretations; one, natural; the other, strained:

a. "To exclude the bonds" owned by the State "from the operation of any composition made;" or

b. "To deprive all subdivisions," any of whose bonds are State owned "of authority to seek a composition."

The District Court, in an effort to sustain the appendage, added language to the statute, and thereby adopted the second version. In so doing, the District Court had recourse "to a major operation of statutory reconstruction"*, or, as Mr. Justice Cardozo would put it, "revised the statute, while professing to construe."

The Legislature employed precise language. It said that the Act shall not apply to bonds while held by the permanent school fund; it did not say that

*Dissenting opinion of Mr. Justice Stone in Guaranty Trust Co. v. Henwood, 307 U. S. 247, 263.

the Act shall be inapplicable to municipalities while their bonds are so held. The Court of Appeals concluded that "the strained construction adopted (by the District Court) in order to preserve this clause is inadmissible." We submit that Judge Sibley's exposition of the meaning of the statute is unanswerable.

The Court of Appeals, giving effect to the words of the lawmakers, held the Act inapplicable to bonds of the State, but applicable to all municipalities. This construction puts the appendage in direct conflict with the Bankruptcy Act "which forbids discrimination among creditors of the same class." A State, as a bondholder, is powerless to withhold its own bonds from a plan of composition while permitting the plan to operate upon bonds held by others. As a matter of law, such a plan would not be fair and equitable, and could not be approved. *Case v. Los Angeles Lumber Co.*, 308 U. S. 106.

Point 3

The decision below is right because, if Article 1024b is construed as petitioner would have it, the caption thereto is misleading and deceptive, and therefore violates Section 35, Article III, Texas Constitution.

If the appendage to Article 1024b is construed as the District Judge reads it, then it means that Texas municipalities are placed in two classes: first, those whose bonds (in any amount) are owned by the permanent school fund, and second, those whose bonds are not so owned.

To the latter class the privileges of the Bankruptcy Act are extended, while to the former they are denied. But the title or caption says that the Act is designed to extend to all Texas municipalities the privileges of the Bankruptcy Act.

Article 1024a was in force at the time of the enactment of Article 1024b. The Court of Appeals ruled, and the ruling has not been challenged by petitioner, that if Article 1024b has the meaning ascribed to it by the District Court, and by petitioner, it has the effect of withdrawing from approximately one-third of the school districts of the State the authorization theretofore granted to them in Article 1024a. Hence, as pointed out by Judge Sibley, the net effect of Article 1024b was not to grant consent but to withdraw it from a numerous class of municipalities.

We submit that the Court of Appeals was right in saying that "the title, under the particular legislative circumstances, is misleading and deceptive."

Where, as here, the petitioner has complained of the ruling that the title to the bill is defective, and has not complained of the Court's interpretation of the statute, petitioner talks beside the point when he says that "the title to a bill must be construed in the light of the bill itself to arrive at the intention of the Legislature with respect to the meaning or intention thereof." (Petition, p. 10.) If it were permissible to cure the fatal defects in the title by looking to the body of the bill, the constitutional requirement would be rendered meaningless. It is true that for the purpose of determining whether the title is deceptive the title and the body of the bill have to be

considered. This is what the Court of Appeals has done, and by that process has found the title wanting.

Respectfully submitted,

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